IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 9090 of 2005(F)

AGAINST THE ORDER IN IA.287/05 IN OS.365/2002 of MUNSIFF COURT, CHITTUR

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PETITIONERS:

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1. **SHUDFACE, S/O. NARAYANAN, RESIDING AT VEMBRA, PERUMATTY VILLAGE, CHITTUR TALUK, PALAKKAD.**

2. **SHAJI S/O.NARAYANAN S/O.NARAYANAN, RESIDING AT VEMBRA, PERUMATTY VILLAGE, CHITTUR TALUK, PALAKKAD.**

3. **SHIBU S/O. NARAYANAN, RESIDING AT VEMBRA, PERUMATTY VILLAGE, CHITTUR TALUK, PALAKKAD.**

4. **SHERSHA S/O. NARAYANAN, RESIDING AT VEMBRA, PERUMATTY VILLAGE, CHITTUR TALUK, PALAKKAD.**

BY ADV. SRI.H.BADARUDDIN

RESPONDENTS:

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1. **REMAKRISHNAN S/O. LATE KALYANI RESIDING AT VEMBRA, PERUMATTY VILLAGE, CHITTUR TALUK, PALAKKAD.**

2. **BOSE S/O. RAMAKRISHNAN RESIDING AT VEMBRA PAERUMATTY VILLAGE, CHITTUR TALUK, PALAKKAD.**

3. **JOSE S/O. RAMAKRISHNAN RESIDING AT VEMBRA PERUMATTY VILLAGE, CHITTUR TALUK, PALAKKAD.**

BY ADV. SRI.P.R.VENKETESH for R1 to R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C) No.9090 of 2005

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Dated: 11th July, 2007

JUDGMENT

Ext.P10 order by which the learned Munsiff dismissed an application submitted by the petitioners-plaintiffs for appointment of an Advocate Commissioner for submission of a report and plan after measurement on the basis of the village office records and the four boundaries, is under challenge in this Writ Petition filed by the petitioners under Article 227 of the Constitution. Ext.P4 is the report submitted by the Advocate Commissioner on the basis of a previous inspection of the properties. The Commissioner has reported that it is not possible to identify plaint schedule item No.8 either on the basis of four boundaries or shown in the plaint schedule since he could identify only three boundaries and the fourth boundary shown as property under the possession of the 1st respondent-Ramakrishnan. The Commissioner also reported that going by the plaint schedule description item No.8 is in old survey No.1382/5 and in the Perumatty Village Office the old survey records are not available. In fact it was on the basis of an interim report earlier submitted by the Advocate Commissioner that the court directed the Commissioner to have a measurement of the properties on the basis of the re-survey

records. The Commissioner has reported in Ext.P4 that the property in re-survey No.509/16 within which item 2 falls has not been sub-divided and the entire property having a total extent of 2 acres and 64 cents is lying compactly as a single plot and hence expressed his difficulty to have a measurement on the basis of the resurvey records also. The learned Munsiff under the impugned order has noticed the report submitted by the Advocate Commissioner as well as the admitted position that there is no physical boundary in existence on the southern side of the plaint schedule item No.8 and rightly concluded that without the actual extent or description of the property, it will not be possible to fix the boundaries.

2. Mr.H.Badruddin, learned counsel for the petitioners submitted that it was due to the inefficiency and lack of knowledge and experience for the surveyor that the measurement could not be conducted. The court below should have rendered assistance of a superior officer in the Survey Department to the Advocate Commissioner. Notwithstanding the above submissions, I am unable to find any fault with Ext.P10 order. The challenge against Ext.P10 will fail. The petitioners are permitted to cross-examine the Commissioner and bring forth the relevant aspects so that they can

establish before the court below during trial that it will still be possible to identify the plaint item No.8. If the court becomes so convinced on the basis of the evidence adduced by the petitioners including the cross-examination of the Commissioner and the Surveyor that it will be still possible to identify the 4th boundary of the property correctly, the confirmation of Ext.P10 will not stand in the way of the court below passing appropriate orders in that regard after the entire evidence is adduced by the parties in the suit. The maxim "Falsa Demonistratia Non Nocat" only means that boundaries will prevail if extent and measurement is found incorrect as per the documents. That maxim cannot have any application as far as correctness of Ext.P10 order is concerned.

The Writ Petition will stand disposed of with the above observations. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**